

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE STEVEN F. CONN, JUDGE
DIVISION 3
DATE: DEC. 17, 2007

VIRLYNN TINNELL, CLERK
SC*

MINUTE ORDER

STATE OF ARIZONA,
Plaintiff,

vs.

JOSE AUXILLO ARREZ LOPEZ
Defendant.

No. CR-2007-1544

STATE OF ARIZONA,
Plaintiff,

vs.

CINDY LEEANN MCBRIDE,
Defendant.

No. CR-2007-1552

STATE OF ARIZONA,
Plaintiff,

vs.

RONALD FRANCIS JONES,
Defendant.

No. CR-2007-1558

STATE OF ARIZONA,
Plaintiff,

vs.

DANN RICHARD PAYNE II,
Defendant.

No. CR-2007-1550

STATE OF ARIZONA,
Plaintiff,

vs.

JOHN PARRISH HAMPTON,
Defendant.

No. CR-2007-1555

STATE OF ARIZONA,
Plaintiff,

vs.

ANGELICA JOHNSON,
Defendant.

No. CR-2007-1580

STATE OF ARIZONA,
Plaintiff,

vs.

MICHELE MARLENE CATHERS,
Defendant.

No. CR-2007-1610

STATE OF ARIZONA,
Plaintiff,

vs.

AARON RALPH FERNANDEZ,
Defendant.

No. 95-CR-874

STATE OF ARIZONA,
Plaintiff,

vs.

JERRY LEONARD ANDRADE,
Defendant.

No. CR-96-314

STATE OF ARIZONA,
Plaintiff,

vs.

MARK ALAN REMINGTON,
Defendant.

No. CR-2003-0916

STATE OF ARIZONA,
Plaintiff,

vs.

JOYCE RENEE VANCE,
Defendant.

No. CR-2004-0848

STATE OF ARIZONA,
Plaintiff,

vs.

LEON YEATES JESSOP,
Defendant.

No. CR-2004-1299

STATE OF ARIZONA,
Plaintiff,

vs.

LISA RENEE BUTLER,
Defendant.

No. CR-2006-0794

STATE OF ARIZONA,
Plaintiff,

vs.

RAYMOND VIERA, JR.,
Defendant.

No. CR-2006-0964 & CR-2006-1199

STATE OF ARIZONA,
Plaintiff,

vs.

BRIAN RAY HESTER,
Defendant.

No. CR-2007-0812

STATE OF ARIZONA,
Plaintiff,

vs.

COREY ADAM KOEMANS,
Defendant.

No. CR-2007-0832

STATE OF ARIZONA,
Plaintiff,

vs.

JEFFREY SCOTT HIGHTOWER,
Defendant.

No. CR-2007-1359

STATE OF ARIZONA,
Plaintiff,

vs.

ERIK NAVARETE,
Defendant.

No. CR-2007-1606

STATE OF ARIZONA,
Plaintiff,

vs.

JASON PAUL SCHILDTE,
Defendant.

No. CR-2007-1642

STATE OF ARIZONA,
Plaintiff,

vs.

CLAYTON JOHN WEST II,
Defendant.

No. CR-2007-1644

STATE OF ARIZONA,
Plaintiff,

vs.

JAMES ANTHONY MATTER,
Defendant.

No. CR-2007-1646

STATE OF ARIZONA,
Plaintiff,

vs.

ALLEN WAYNE BAKER,
Defendant.

No. CR-2007-1647

STATE OF ARIZONA,
Plaintiff,

vs.

CHARLES JETER,
Defendant.

No. CR-2007-1652

STATE OF ARIZONA,
Plaintiff,

vs.

BOBBY DARRELL KOEPPEN, JR.,
Defendant.

No. CR-2007-1656

STATE OF ARIZONA,
Plaintiff,

vs.

RUPERT JAMES WHITE III,
Defendant.

No. CR-2007-1660

STATE OF ARIZONA,
Plaintiff,

vs.

WAYNE O. HALL,
Defendant.

No. CR-2007-1492

STATE OF ARIZONA,
Plaintiff,

vs.

RANDELL L. BEHR,
Defendant.

No. CR-2007-1620

STATE OF ARIZONA,
Plaintiff,

vs.

JAMES P. MAROLPOULOS,
Defendant.

No. CR-2007-1685

STATE OF ARIZONA,
Plaintiff,

vs.

RUDY ALBERT SINSUN,
Defendant.

No. CR-2007-0836

STATE OF ARIZONA,
Plaintiff,

vs.

JOSE S.A. PANIAGUA-TREJO,
Defendant.

No. CR-2007-1749

STATE OF ARIZONA,
Plaintiff,

vs.

PATRICK GLEN PAWLOWSKI,
Defendant.

No. CR-2007-1754

STATE OF ARIZONA,
Plaintiff,

vs.

JOSHUA ROBERT PARKER,
Defendant.

No. CR-2007-1767

STATE OF ARIZONA,
Plaintiff,

vs.

WILBUR LEROY MYERS, JR.,
Defendant.

No. CR-2007-1766

STATE OF ARIZONA,
Plaintiff,

vs.

LORETO DELATOBA,
Defendant.

No. CR-2007-1746

STATE OF ARIZONA,
Plaintiff,

vs.

MICHAEL SHANE DENNIS,
Defendant.

No. CR-2007-1736

STATE OF ARIZONA,
Plaintiff,

vs.

JASON ERLER,
Defendant.

No. CR-2007-1548

STATE OF ARIZONA,
Plaintiff,

vs.

SABRINA A. CARLSRUD,
Defendant.

No. CR-2007-1561

STATE OF ARIZONA,
Plaintiff,

vs.

ANGEL FARGAS,
Defendant.

No. CR-2007-1586

STATE OF ARIZONA,
Plaintiff,

vs.

RICHARD D. WARREN,
Defendant.

No. CR-2007-1598

The Court initially clarifies the unwieldy caption of this Order. Defendants #1-3 are those in whose cases the Public Defender's Office filed a Motion to Withdraw and which were initially consolidated by the Court for purposes of the evidentiary hearing on that motion. Defendants #4-7 are those Defendants whose cases are assigned to Judge Jantzen but which have been consolidated with Defendants #1-3 for the Court to rule on the Motion to Withdraw filed in each of their cases by the Public Defender's office. Defendants #8-25 are those whose cases the Public Defender's Office filed a Motion to Withdraw and Request to Consolidate, requests which were previously either denied or not ruled upon because they were not filed by counsel for the Public Defender's Office. Defendants #26-28 are among those whose names appeared on the calendar for the evidentiary hearing on December 13, 2007, for reasons which the Court cannot determine but which it will assume are legitimate. Defendants #29-35 are those in which counsel for the Public Defender's Office submitted to the Court around the time of the evidentiary hearing on December 13, 2007, what the Court cannot tell are either originals or copies of a Motion to Withdraw and Request to Consolidate in cases assigned to this Court. Defendants #36-39 are those on whose behalf other attorneys not formally involved in the cases filed what purported to be a limited notice of appearance and whose cases are not already listed above.

The Court acknowledges that there may be cases assigned to this Court or to Judge Jantzen in which similar motions have been filed and which could be included in this Order. If the Court delayed entering this Order until it could be sure every relevant defendant's name was included, the Order would never be entered. This Court will rule consistently with this Order in any cases in the future in which similar motions are filed, at least until the Court is convinced that the

reasons for doing so no longer exist. The Court assumes that Judge Jantzen will do likewise because he agreed to having some of his cases consolidated with cases assigned to this Court to rule on the motions to withdraw, but he is under no obligation to do so except in the cases in which he has agreed to be bound by this Court's ruling. This Order has no bearing on criminal cases assigned to Judge Moon, Judge Chavez, Judge Weiss or any visiting judge in whose cases such motions have been or will be filed. Whether such judges reach the same conclusion as did this Court following a 3-hour evidentiary hearing at which expert testimony was presented is up to them.

The Court has reviewed the various pleadings that have been submitted by counsel for the Public Defender's Office in support of the motions to withdraw. The Court has considered the testimony, exhibits and arguments presented at the hearing on December 13, 2007. As the Court acknowledged at the hearing, the Court has been a party to some informal discussions with the Public Defender and has been present at a meeting where he discussed many of the issues discussed at the hearing. As may have been gathered from some of the questions asked by the Court, it has also spoken informally over the years with persons who were employed by the Public Defender's Office, both during and after such employment, regarding their experiences of working in that office. The Court feels obligated to consider none of the above in ruling on the motions to withdraw. The purpose of having this hearing was for the facts and circumstances considered by the Court in making its decision to be as transparent as possible. That purpose would be ill served by the Court relying on undisclosed or unknown things not made part of the record in these cases.

The Court emphasizes that, notwithstanding some of the questions it asked at the hearing,

the issue to be addressed by the Court is not how the Public Defender's Office came to be in its present predicament. The issue relevant to the ability of those who have stayed at the Public Defender's Office to discharge their professional and ethical responsibilities is not why there are not more people there to assist them in doing so. There may be legitimate concerns regarding recruitment policies, retention issues, morale or other unidentified problems impacting the staffing of the Public Defender's Office but those are beyond the scope of this Court's jurisdiction. This Court is not in the personnel or human resources business and will leave these and other concerns to be addressed by those qualified to do so. Obviously, how the Public Defender's Office got to where it is now is of no concern to the Defendants whose cases are involved and whose rights to effective representation of counsel are being addressed.

The Court also cannot concern itself with the financial or funding implications of its ruling on the motions to withdraw. It would be naive to suggest that the Court is unaware of these issues. The Court does not live in an ivory tower removed from the realities of county government. The Court, however, is part of the judicial branch of government and is not responsible for funding decisions. This Court has to decide the legal rights and responsibilities of 2 stakeholders in the criminal justice system. The Court has to decide whether the members of the Public Defender's Office can discharge their professional and ethical responsibilities if they are not allowed to withdraw in these cases and whether the Defendants represented by those attorneys will be denied effective representation of counsel if the attorneys are not allowed to withdraw. The financial implications and logistics of identifying, appointing and paying attorneys outside the Public Defender's Office to handle any case in which defendants are left without counsel will have

to be addressed by the County and will not be considered by the Court in its analysis of the legal and factual issues presented in these cases.

There were several issues presented at the hearing which the Court feels could be problematic in a close case. The Court emphasizes that it has no desire to run the Public Defender's office and would be completely unqualified to do so. The Court does have reservations about some areas of discussion. The Court wonders whether the time contemplated for training before attorneys can handle felony cases could not be reduced, creating more attorneys able to handle cases of the magnitude involved in this Order and reducing the likelihood that Mohave County is spending money to train attorneys to work in Maricopa County. The Court wonders whether the Public Defender's Office position reflects an exaggerated fear of Rule 32 claims of ineffective assistance of counsel, bar discipline and even legal liability. The Court wonders whether the weighted case analysis accurately considers the local practices in Mohave County and whether the rate at which the Public Defender's Office actually takes cases to trial is relevant. The Court wonders whether the counting and weighing of felonies should not have some mechanism to distinguish between a possession of drug paraphernalia felony case and a fraudulent schemes and artifices case.

The Court reserves the right to revisit some of the issues stated above if it is presented in the future with what it considers to be a close case. This is not such a case. The evidence presented at the hearing leaves the court with no doubt whatsoever that the attorneys in the Public Defender's Office cannot continue representing the Defendants in these cases in light of their already existing caseloads. They cannot reallocate resources to address the needs of these new

clients without shirking their ethical duties toward and denying effective counsel to their present clients. Requiring or even allowing the Public Defender's Office to remain as appointed counsel in these case would likely compromise them from an ethical standpoint and deprive the Defendants in these cases of their rights to effective representation. The Public Defender's Office must be allowed to withdraw in each of these cases.

IT IS ORDERED allowing the Public Defender's Office to withdraw as counsel in each of the cases identified in the caption of this Order.

IT IS ORDERED that the policy of at least this Court will be not to require future motions to withdraw to be accompanied by hundreds of pages of exhibits, transcripts of the evidentiary hearing or extensive legal citation but to grant motions and sign appropriate Orders based upon the briefest possible reference to this Order, not to exceed one sentence in length.

IT IS ORDERED directing the Public Defender's Office to provide to this Court as soon as possible a list of cases in which it has already filed a Motion to Withdraw but which are not included in the caption of this Order so that the Court may grant the motions as soon as possible. The Court will address any future motions that may be filed as they are brought to the Court's attention in the usual course of events.

IT IS ORDERED referring to the Presiding Judge the issue of how replacement counsel will be provided for defendants affected by this Order and by future similar orders. It will be up to the Presiding Judge to provide for the appropriate mechanism whereby the County will deliver appointed counsel to those in need. Whether the Presiding Judge appoints a Special Master or devises some other plan beyond what this Court might suggest will be entirely up to the Presiding

Judge and will undoubtedly reflect a better understanding and appreciation of the political, logistical, ethical and financial issues than would any temporary solution fashioned by this Court.

cc:

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Honorable Steven F. Conn
Division 3

Honorable Randolph A. Bartlett
Presiding Judge of Superior Court

Honorable James E. Chavez
Division 4

Honorable Robert R. Moon
Division 5

Honorable Richard Weiss
Division 6

Honorable Lee F. Jantzen
Court Commissioner

Mohave County Jail

Ron Walker
Mohave County Manager

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